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Avoiding the Penalty Box

Possible federal sanctions await any state that misses deadlines to improve air quality. Penalties could include additional reductions of industrial emissions and loss of federal highway funds.

Sanctions are the price to be paid for falling short of federal clean air requirements

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Any state that is facing a deadline to clean up air pollution knows about the "sanctions clock."

Under the Clean Air Act, federal sanctions can be imposed when the Environmental Protection Agency disapproves a State Implementation Plan--the state's strategy for reducing harmful air emissions--or finds the state failed to fully submit or implement all the requirements of the plan.

Automatic sanctions are applied according to a set of mandatory deadlines called the sanctions clock. Typically, a state has up to 18 months to remedy the problem, or the sanctions apply.

The sanctions clock has run once in Texas--that was in Dallas-Fort Worth and the clock was stopped before sanctions could be invoked.

Texas now faces the possibility of triggering the sanctions clock again. If that happens, it could be more difficult this time to pull back the hands. EPA officials have served notice that failure to adequately fund the state's clean-air initiatives would be justification for starting the clock.



In a Bind

In the last 12 years, EPA has started the sanctions clock more than 800 times in states trying to deal with various forms of air pollution--not only ozone but also carbon monoxide, particulate matter, sulfur dioxide, nitrogen oxide, and lead. Of those, sanctions were imposed in 29 cases.

Sanctions Activity 1990-2002

Since the Clean Air Act amendments of 1990, many states have had to submit State Implementation Plans (SIPs) detailing how they will address air pollution. If the plans are deficient or a state fails to implement the changes on schedule, EPA can start the sanctions clock.

SIP revisions submitted by states	2,806
Number of times EPA started sanctions clock	867
Number of times EPA imposed sanctions	29
Sanctions in force (end of 2002)	1*

*Federal sanctions in Montana have been active since 1995.
Source: Environmental Protection Agency

In Texas, ozone has been the main culprit in several urban areas. As the state's population has grown, air pollution has been a consequence of high-volume traffic and the activities of large-scale industrial sites and power plants.

The threat of federal sanctions is serious because of EPA's enforcement policies. No later than 18 months after EPA disapproves a SIP--or finds that a state failed to submit or implement a SIP--the first sanctions are enacted. There is no additional public comment period.

There are two types of sanctions:

Two-to-one emission offsets. This sanction affects major stationary sources of pollution, such as factories or power generators. Permits for construction or expansion become much harder to obtain, and these facilities have to show that air emissions will be reduced at another location by twice the amount as the emissions expected at the new development.

Federal highway funds. Federal funding for transportation projects is halted within the nonattainment area, with the

exception of projects dealing with safety, transit, and improvements that benefit air quality (HOV lanes and carpool/vanpool programs).

In most cases, EPA first imposes the two-to-one offset sanctions. Six months later, if the state still has not met its SIP obligations, additional sanctions kick in.

Cutting off federal highway funds is EPA's preferred second sanction. Also, EPA is required to develop a Federal Implementation Plan with mandated strategies, such as emissions standards, for a nonattainment area to meet air quality standards. The state must fix the SIP to win removal of the sanctions and the Federal Implementation Plan.

Beat the Clock

Texas flirted with federal sanctions in 1999, when EPA found that the state had failed to submit the required SIP for ozone attainment in the Dallas-Fort Worth area and that the rate-of-progress plan was incomplete. The sanctions clock began and ran until June 2000--five months short of sanctions--when the state proved it had corrected the deficiencies.

"That was an easier clock to stop," said Lucinda Watson, a senior air attorney with EPA's Office of Regional Counsel in Dallas. "It's much more serious if we disapprove a plan--then it's more difficult to stop the clock."

Now, both Dallas-Fort Worth and Houston are on shaky ground with EPA, with federal environmental officials saying they are concerned by what the Legislature will do to fund one of the state's leading programs for clean air initiatives.

If cleanup proposals "for either Dallas-Fort Worth or Houston are not adequately funded, the sanctions clock would start," said Watson.

Why the Clock Starts Running

Of the 867 times that EPA has started the sanctions clock since 1990, the primary causes were:

A state fails to submit a SIP	82%
EPA disapproves the SIP because not all conditions were met	12%
EPA finds the SIP to be incomplete	6%

Source: Environmental Protection Agency

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